



(2)
No. 9, Original

IN THE
Supreme Court of the United States

OCTOBER TERM, 1990

UNITED STATES OF AMERICA,
Plaintiff,

vs.

STATE OF LOUISIANA, *et al.,*
Defendants.

(Alabama and Mississippi Boundary Case)

**ADDITIONAL SUPPLEMENTAL REPORT OF
WALTER P. ARMSTRONG, JR., SPECIAL MASTER**

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In an earlier opinion (470 U.S. 93) the Court held that Mississippi Sound is a historic bay within the meaning of Article 7(b) of the Convention on the Territorial Sea and the Contiguous Zone (1965), 15 U.S.T. (Pt.2) 1607, T.I.A.S. No. 5639 and that the waters thereof are therefore inland waters. The Court therefor concluded:

Under this view, the coastline of the States consists of the lines of ordinary low water along the southern coasts of the barrier islands together with appropriate lines connecting the barrier islands. These latter lines mark the seaward limit of Mississippi Sound.

(470 U.S. at p. 96)

The Court therefore ordered:

The parties are directed promptly to submit to the Special Master a proposed appropriate decree for this Court's consideration; if the parties are unable to agree upon the form of the decree, each shall submit its proposal to the Master for his consideration and recommendation.

(470 U.S. at p. 115)

The parties were unable to agree, and accordingly each filed with me a form of proposed decree, which differed only in two respects, both involving only the coast line of Mississippi. The first was the westward terminus of a line between Petit Bois Island and Horn Island. The second was a line extending southward from a point upon Ship Island to the Mississippi-Louisiana boundary, which each party proposed but in a different fashion. Neither of these latter proposed lines would be "along the southern coasts of the Barrier Islands."

On March 16, 1987 after extensive evidentiary hearings, I filed a Supplemental Report recommending that the proposal of the United States as to Mississippi's seaward boundary between Petit Bois Island and Horn Island be adopted. No exception was taken to that portion of the report, which was subsequently confirmed by the Court's decision.

As to the second point, my report reads:

I therefore conclude that for the reasons stated above the decree proposed by Mississippi should not be entered and that in the absence of a stipulation or the adoption of a straight baseline the acceptance of the line proposed by the United States would amount to a modification of the Court's opinion of February 26, 1985 which would be beyond the scope of the reference to me as a Special Master.

Exception to this portion of the report was taken by the State of Mississippi only. The matter was briefed and argued before

the Court, which rendered an opinion March 1, 1988 (485 U.S. 88), in which it said:

The specific proceeding that culminated in this Court's opinion of February 26, 1985, reported at 470 U.S. 93, [84 L. Ed. 2d 73, 105 S. Ct. 1074,] concerned, we thought, only Mississippi Sound and its boundary. See *id.*, at 94; [84 L. Ed. 2d 73, 105 S. Ct. 1974;] Tr. of Oral Arg. 3. The Special Master's Report and his stated reservation as to the scope of the reference to him also appear to reflect that understanding. But in its argument to the Master and in its present exceptions, Mississippi seeks to extend the scope of this litigation to include its interest in seabed south of Mississippi Sound. The State's current arguments bear little relation to earlier proceedings unless one engrafts upon our 1985 opinion, and upon our direction therein for a proposed decree fixing the southern boundary of Mississippi Sound, an implication that Mississippi's rights, if any, *south* of that Sound's boundary are to be definitively determined in this phase of the litigation.

(485 U.S. at p. 91)

The Court, however, rejected that implication, saying:

Because Mississippi's exceptions to the Special Master's Supplemental Report do not relate at all to Mississippi Sound, and do not contest the validity of that Sound's closing lines recommended by the Master, we are left with a situation where all parties are in agreement as to that Sound and its boundary.

(485 U.S. at p. 92)

The Court therefore overruled Mississippi's exception and again directed the parties promptly to submit to the Special Master a proposed appropriate decree defining the claims of Alabama and Mississippi with respect to Mississippi Sound. The parties have now agreed upon the form of such a proposed

decree, a copy of which is attached hereto as Appendix A, which delimits the coastlines of Alabama and Mississippi by salient points lying along the southern coast of the Barrier Islands together with appropriate lines connecting those islands, up to a point upon Ship Island which coincides with the northern terminus of a line which is the subject of litigation in another suit, *Mississippi v. United States*, No. 113 Original. The stipulation reflecting the consent of the parties is attached as Appendix B.

I therefore recommend that the decree be entered as proposed.

WALTER P. ARMSTRONG JR.
Special Master

October 1, 1990